

# EXHIBIT 5

AMENDMENT TO AGREEMENT

THIS AMENDMENT TO AGREEMENT made and executed as of the Effective Date set forth below, by and among Bed Bath & Beyond Inc. [if there are multiple entities on grant, list all entities on Schedule A], having its principal place of business at 650 Liberty Avenue, Union NJ 07083 (hereinafter "Grantee"), and the New Jersey Economic Development Authority, a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq., having its offices at 36 West State Street, PO Box 990, Trenton, New Jersey 08625 (hereinafter "Grantor").

WHEREAS, Grantee desires to amend its Business Employment Incentive Program ("BEIP") grant authorized pursuant to the BEIP Grant Agreement dated Dec. 4, 2006 by and among the Grantee and Grantor, as it may have been amended ("BEIP Agreement") to elect to convert its grant to a tax credit;

WHEREAS, capitalized terms not defined herein shall have the meanings set forth in the BEIP Agreement.

NOW, THEREFORE in consideration of the mutual promises and covenants made herein, the Parties agree to amend the BEIP Agreement as follows:

**1. Conversion.** Grantee hereby directs the Grantor to convert its grant under the BEIP Agreement to a tax credit against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c.162 (C.54:10A-5). Grantee acknowledges that this election is irrevocable. Grantee understands and agrees that the tax credit, including the amount thereof and when it may be used, shall be subject to all the terms and conditions of L.2015, c.194 as may be amended from time to time (the "Act"), and of the tax laws, as may be amended from time to time.

**2. Full Force and Effect.** This election shall amend the BEIP Agreement and to the extent this Amendment to Agreement is inconsistent with any provision of the BEIP Agreement, including but not limited to Section 4 thereof, this Amendment to Agreement shall control. Except as provided in this Amendment to Agreement, all terms, covenants and conditions of the BEIP Agreement shall remain in full force and effect.

**3. Effective Date.** This Amendment to Agreement shall be effective as of the date set forth below provided that it is received by Grantor by close of business on July 11, 2016. It may be delivered by telecopier, email, PDF or other facsimile transmission, all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.

**4. Allocation of Tax Credit.** [For Grantee with multiple entities on BEIP Agreement] Grantee directs the tax credits to be allocated to the following entities on the BEIP Agreement in the following percentages.

**5.** The Grantor is not liable for damages resulting from the issuance, non-issuance, or use of the tax credits. The Grantee acknowledges and accepts that the Legislature may enact further changes to the Act or to tax laws. Grantee further acknowledges and accepts that the terms and conditions set forth herein and in the Act, including the tax credit amount and when such amounts may be applied, are subject to changes to the Act and implementing regulations, if any, and to tax laws.

This allocation may be revised on an annual basis provided the allocation is only to entities listed on the BEIP Agreement and Schedule A and the request is received by the Grantor sixty (60) days before the issuance of the tax credit, as set forth in L.2015, c.194.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to Agreement to be executed by their respective officers duly authorized as of the date last written below ("Effective Date").

WITNESS:

GRANTEE:

Karen Clark

By: Susan E Lattmann

Name: Susan E. Lattmann  
Title: Chief Financial Officer and Treasurer

Date: 6/9/2016

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*Fully executed Amendments must include signature pages for all entities on BEIP Agreement.*

WITNESS:

Margot H. Gaura

GRANTOR:  
NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

By: Elisa Coane

Elisa Coane  
Managing Director – Post Closing Financial  
Services

Date: 6/9/16

*Finance + Development*

SCHEDULE A